

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FLOYD WALKER III, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

**PHILLIPS & COHEN
ASSOCIATES, LTD.**, a New Jersey
corporation,

Defendant.

Case No.

CLASS ACTION

DEMAND FOR JURY TRIAL

Plaintiff Floyd Walker III (“Plaintiff” or “Walker III”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Phillips & Cohen Associates, Ltd., (“Defendant” or “Phillips & Cohen Associates”) to stop the Defendant from violating the Telephone Consumer Protection Act by making calls without consent to consumers’ cellular phone numbers using pre-recorded voice messages. Plaintiff also seeks injunctive and monetary relief for all persons injured by Defendant’s conduct. Plaintiff, for this Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

PARTIES

1. Plaintiff Floyd Walker III is a resident of West Glasgow, Kentucky.

2. Defendant Phillips & Cohen Associates is a New Jersey corporation.

Defendant Phillips & Cohen Associates conducts business throughout this District, and the U.S.

JURISDICTION AND VENUE

3. This Court has Federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”).

4. This Court has personal jurisdiction over the Defendant and the venue is proper under 28 U.S.C. § 1391(b) because the Defendant resides in this District.

INTRODUCTION

5. As the Supreme Court recently explained, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back.” *Barr v. Am. Ass’n of Political Consultants*, No. 19-631, 2020 U.S. LEXIS 3544, at *5 (U.S. July 6, 2020).

6. When Congress enacted the TCPA in 1991, it found that Americans were receiving more than 18 million robocalls every day. 105 Stat. 2394 at § 2(3).

7. By 2003, due to more powerful autodialing technology, Americans were receiving more than 100 million robocalls every day. In re Rules and Regulations Implementing the TCPA of 1991, 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

8. The problems Congress identified when it enacted the TCPA have only grown exponentially in recent years.

9. Industry data shows that the number of robocalls made each month increased from 831 million in September 2015 to 4.7 billion in December 2018—a 466% increase in three years.

10. According to online robocall tracking service “YouMail,” 4.4 billion robocalls were placed in March 2022 alone, at a rate of 140.8 million calls per day. www.robocallindex.com (last visited April 10, 2022).

11. The FCC also has received an increasing number of complaints about unwanted calls, with 150,000 complaints in 2016, 185,000 complaints in 2017, and 232,000 complaints in 2018. FCC, Consumer Complaint Data Center, www.fcc.gov/consumer-help-center-data.

12. “Robocalls and telemarketing calls are currently the number one source of consumer complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July 22, 2016), statement of FCC chairman.¹

¹ <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>

13. “The FTC receives more complains about unwanted calls than all other complaints combined.” Staff of the Federal Trade Commission’s Bureau of Consumer Protection, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, at 2 (2016).²

COMMON ALLEGATIONS

14. Defendant Phillips & Cohen Associates is a third-party debt collection company.

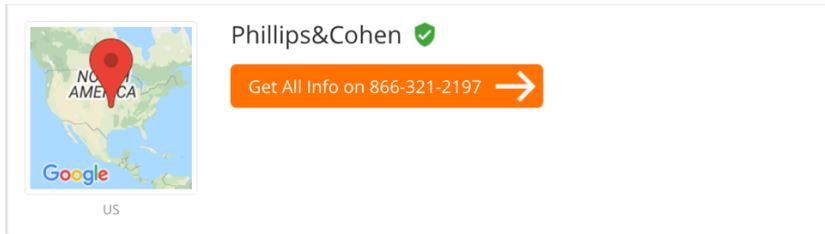
15. As part of its business, Defendant Phillips & Cohen Associates contacts consumers to collect on debts using prerecorded voice messages.

16. Defendant Phillips & Cohen Associates places debt collection calls using a prerecorded voice to some consumers who do not owe any debts to them and from whom it has never obtained prior express written to place such calls, like in the case of Plaintiff Walker III.

17. Multiple consumers have posted complaint regarding calls they received from and/or on behalf of Defendant Phillips & Cohen Associates, similar to those received by Plaintiff Walker III, including complaints of receiving

² https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf

unsolicited pre-recorded calls from 866-321-2197, the same phone number from which the Plaintiff Walker III was called, for instance:





Phillips&Cohen ✓


Get All Info on 866-321-2197 →

US


Typical Messages

 This call is from Tom Williams of Philips and cone(?) Associates. This call is from a debt collector and this is an attempt to collect a debt. Any information obtained will be used for that purpose. Please return this call to our toll free number 866-321-2195 my phone extension is 1125 and provide reference number *****, thank you.

 Hello this message is from Philips and Cohen Associates LPD please contact tamara(?) Williams or any of our representatives at 866-321-2195 Monday through Thursday between 8:00 AM and 9:00 PM and Friday 8:00 AM to 6:00 PM Eastern Time.

 Good morning this call is from Howard. He's in Phillips and Cohen Associates. This is a communication from a debt collector. And this is an attempt to collect the debt. Any information obtained will be used for that purpose. Please return the call to our toll free number 866-321-2195, extension 1159 provide reference number of *****. Thank you.

3

Ann abusive [X]  Tweet


I get up to 9 calls from this number every day

Caller: phillips cohen

27 Feb 2020

Comment

4

LF abusive [X]  Tweet

Called two days in a row. No message. Caller ID comes up Phillips & Cohen.

Caller: Phillips&Cohen

28 Jan 2020

Comment

5

³ <https://directory.youmail.com/directory/phone/8663212197>

⁴ <https://reverd.com/blog/1-866-321-2197/4>

⁵ *Id.*



SueB
27 Oct 2020

0

Calls each day shortly after 8AM local time. Never leaves a message. From other websites, it appears this is a scammy debt collector preying on people who have had a death in the family.

Caller: PHILLIPS&COHEN

Reply

!



Brenda
4 Nov 2020

0

I'm being harassed by this number and I want it to stop!

Caller: 866-321-2197

Reply

!

6



WaR
22 Oct 2019

0

Calls regularly about supposed impending car warranty expiration. Of my two cars, one is already well out of warranty and the other is leased well within. No way!

Caller: Phillips Cohen

Call type: Scam suspicion

Reply

!

7



Anonymous
22 Feb 2022

0

Received a call yesterday, my Robocaller intercepted it, and they hung up. First call and hopefully the last. Never said anything, but disconnected the call.

Caller: Philip and Cohen Associates

Call type: Debt collector

Reply



!

8


⁶ <https://800notes.com/Phone.aspx/1-866-321-2197/2>

⁷ *Id.*



⁸ *Id.*


866-321-2197


[Report a phone call](#) from 866-321-2197 and help to identify who and why is calling from this number.




b
 12 Aug 2019 | 5 replies


 0
 



I get a call from this number almost every morning between 8:00a.m. and 8:30a.m. for the past several weeks. No message is left. I have no idea who this is coming from. Irritating.

Caller: toll free number

9




V Thomas
 13 Sep 2019 | 1 reply


 0
 



These people call me all day, every day. ROBO call. This nonsense needs to stop. I researched it and find that it is a collection company. They need to stop calling me. There is no reason for a collection company to be calling me. I owe no one money. I have some loans and I pay the bills prior to the due date.

Caller: Phillips & Cohen
Call type: Scam suspicion

10



Jake replies to [b](#)
 12 Dec 2019 | 1 reply


 0
 

They were on my caller ID as [Phillips & Cohen](#) and when I looked them up, they are a debt collection agency and I have no debts and I'm a senior citizen in my 80's They left no message so either they dialed a wrong number or they are using a business name that's not there's, so they can make scamming calls

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⁹ <https://whocallsme.com/Phone-Number.aspx/8663212197>

¹⁰ *Id.*

¹¹ *Id.*



Annoyed replies to [b](#)
17 Jan 2020



I get that call also every day all morning. The name that comes up is Cohen Phillips

Reply



Reddevil73
13 Feb 2020



I have gotten 3 calls from 866-321-2197 and the caller ID's the number to Cohen Phillips.

Reply



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PLAINTIFF WALKER III'S ALLEGATIONS

18. Plaintiff Walker III is the sole subscriber and user of the cell phone number ending xxx-xxx-8452.

19. In March 2022, Plaintiff Walker III started receiving calls from Defendant Phillips & Cohen Associates on his cell phone. Plaintiff answered the calls, which started with a prerecorded message in automated voice regarding a debt owed to the Defendant. Plaintiff stayed on the call, pressed the keys as prompted by the automated voice message and spoke to the Defendant's employees on multiple occasions and informed them that they had the wrong number and requested them to stop calling his cell phone.

20. Plaintiff Walker III received such phone calls from the Defendant on:

- March 17, 2022, at 1:41 PM:

¹² *Id.*

March 17, 2022

+1 866-321-2197

1:41 PM

- March 24, 2022, at 2:02 PM and 2:04 PM:

March 24, 2022

+1 866-321-2197

2:04 PM

+1 866-321-2197

2:02 PM

21. On calling the phone number 866-321-2197, it is answered by an automated voice system which identifies Defendant Phillips & Cohen Associates.

22. Despite the stop requests, Plaintiff Walker III continues to receive calls from the Defendant Phillips & Cohen Associates using pre-recorded voice messages.

23. The unauthorized pre-recorded telephone calls that Plaintiff received from and/or on behalf of the Defendant have harmed Plaintiff Walker III in the form of annoyance, nuisance, and invasion of privacy, occupation of his phone line and disturbance of the use and enjoyment of his phone, wear and tear on the phone's hardware (including the phone's battery), and consumption of memory on the phone.

24. Seeking redress for these injuries, Plaintiff Walker III, on behalf of himself and Class of similarly situated individuals, brings suit under the TCPA.

CLASS ALLEGATIONS

25. Plaintiff Walker III brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) and seek certification of the following Class:

Pre-recorded No Consent Class: All persons in the United States who from four years prior to the filing of this action through trial (1) the Defendant (or an agent on Defendant's behalf) called on their cellular telephone number (2) using the same or a similar pre-recorded voice message as was used to call the Plaintiff.

26. The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, their subsidiaries, parents, successors, predecessors, and any entity in which either Defendant or their parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against the Defendant has been fully and finally adjudicated and/or released. Plaintiff Walker III anticipates the need to amend the Class definition following appropriate discovery.

27. **Numerosity:** On information and belief, there are hundreds, if not thousands of members of the Class such that joinder of all members is impracticable.

28. **Commonality and Predominance:** There are many questions of law and fact common to the claims of the Plaintiff and the Class, and those questions

predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- (a) whether Defendant used a prerecorded message to make calls;
- (b) whether Defendant had consent to make the calls;
- (c) whether Defendant's conduct violated the TCPA; and
- (d) whether members of the Class are entitled to treble damages based on the willfulness of Defendant's conduct.

29. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in class actions. The Plaintiff has no interests antagonistic to those of the Class, and Defendant have no defenses unique to the Plaintiff. The Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and have the financial resources to do so. Neither the Plaintiff nor his counsel have any interest adverse to the Class.

30. **Appropriateness:** This class action is also appropriate for certification because the Defendant have acted or refused to act on grounds generally applicable to the Class, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and

affect the members of the Class uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Class, not on facts or law applicable only to Plaintiff Walker III. Additionally, the damages suffered by individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of the Class to obtain effective relief from Defendant's misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CLAIM FOR RELIEF
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)
(On Behalf of Plaintiff Walker III and the Pre-recorded No Consent Class)

31. Plaintiff repeats and realleges paragraphs 1 through 30 of this Complaint and incorporates them by reference herein.

32. Defendant transmitted unwanted telephone calls to Plaintiff Walker III and the other members of the Pre-recorded No Consent Class using a pre-recorded voice message.

33. These pre-recorded voice calls were made *en masse* without the prior express written consent of the Plaintiff Walker III and the other members of the Pre-recorded No Consent Class.

34. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a

result of Defendant's conduct, Plaintiff Walker III and the other members of the Pre-recorded No Consent Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation, as well as injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Class; appointing Plaintiff as the representative of the Class; and appointing his attorneys as Class Counsel;
- b) An award of statutory damages and costs;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all unsolicited calling activity, and to otherwise protect the interests of the Class; and
- e) Such further and other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Walker III requests a jury trial.

FLOYD WALKER III, individually and
on behalf of all others similarly situated,

DATED this 28th day of April, 2022.

By: /s/ Stefan Coleman

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